
No. 5914

IN THE

United States

Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

In the Matter of BEVERLYRIDGE
COMPANY, et al., Bankrupt.

GEORGE H. OSWALD and RICHARD
CASTLE,

Appellants,

vs.

JOHN BEYER, Trustee,

Appellee.

BRIEF OF APPELLANTS

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BRIEF OF APPELLANTS

By stipulation, the claims of George H. Oswald and Richard Castle were consolidated and heard at the same time by the Referee in Bankruptcy, and by stipulation and order of court they were treated as one by the United States District Court upon review, and an order having heretofore been made by this Court, the same are consolidated and one Transcript of Record filed for both appeals, together with one brief on appeal to the Circuit Court of Appeals.

Statement of the Case.

This matter comes before this court on appeal from an order upon review by the District Court affirming an order of the Referee in Bankruptcy.

The Beverlyridge Company, a co-partnership, composed of several persons, was adjudged a bankrupt. The claimant and appellant herein, Richard Castle, claiming the Beverlyridge Company was indebted to him, filed his Proof of Unsecured Debt, which claim was objected to by the appellee, John Beyer, as Trustee of the Beverlyridge Company, a co-partnership, bankrupt. In due course, the claim was heard before the Hon. Earl E. Moss, Referee. The matter was submitted and the Referee filed his Opinion, Findings of Fact and Conclusions of Law, and order thereon, in which the claim of Richard Castle was rejected, except as to the sum of Eight Hundred and Eighty Dollars (\$880.00), actual cash loaned by him to the Beverlyridge Company, a co-partnership.

The claim of Richard Castle, if allowed, was stipulated to be \$20,474.00, and is based upon an agreement made between Richard Castle and the said Beverlyridge Company, in which the bankrupt agreed to convey certain real property for and in consideration of Richard Castle procuring a contract between the bankrupt and George Oswald for improvements on a certain subdivision situated in the City of Los Angeles, State of California, which the bankrupt was promoting. The said agreement consisted of a contract dated Dec. 14, 1925, and a letter of November 5th, 1925, to Richard Castle, which letter

was signed "Beverlyridge Company, Charles Stone, Managing Director" (Trans. of Record, pages 81 to 84, inc.), and for convenience of the court are set forth as follows:

AGREEMENT TO CONVEY
REAL ESTATE

This Agreement, made this 14th day of December, 1925, by and between CHARLES STONE, as trustee under a Deed and Declaration of Trust dated April 18, 1925, and recorded in the office of the Recorder of Los Angeles County, California, on the 21st day of May, 1925, in Book 4002 of Miscellaneous Records at Page 108, party of the first part, and RICHARD CASTLE of Los Angeles, California, party of the second part,

Party of the first part, in consideration of a valuable sum in dollars to him in hand paid, receipt of which is hereby acknowledged, does hereby covenant and agree to convey to party of the second part the following real property in the City of Los Angeles, County of Los Angeles, State of California, to-wit: (here the property is described by metes and bounds)

It is expressly understood and agreed, however, by both parties hereto that the deed to be executed by party of the first part pursuant hereto shall contain restrictions as nearly identical as may be with restriction (1), (2), (3) and (5) and also restrictions similar to restriction No. (4) as contained in all grant deeds heretofore executed by party of the first part conveying any lot or lots in Tract 8030 in the City of Los Angeles, as shown on Map thereof recorded in Book of Maps, Page in the office of the Recorder of Los Angeles County aforesaid.

It is further understood and agreed that as soon as party of the first part shall have caused to be duly approved and recorded in the office of said Recorder a map or plat of the Tract which contains the above described premises, party of the second part shall quit claim and reconvey said premises by the same description to party of the first part and party of the first part shall immediately thereupon convey to party of the second part, subject to the uniform restrictions to be incorporated in all conveyances of lots in said proposed tract, the premises hereinabove described by their proper lot and tract numbers.

It is further understood and agreed that at the time of such conveyance party of the second part shall pay and discharge the full release price necessary to secure partial reconveyance of said lots by the trustee under two certain Deeds of Trust, each of which is now a blanket lien on the within described premises and other property.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

CHARLES STONE, *Trustee.*
Grantor

RICHARD CASTLE,
Grantee.

STATE OF CALIFORNIA,
County of Los Angeles—ss.

Be it remembered that on this 14th day of December, 1925, before me, Gertrude M. Hartman, a notary public in and for said county and state, personally appeared Charles Stone and Richard Castle, each personally known to me and known to me to be the individuals described in and who executed the foregoing instrument, and they severally acknowledged to me that they executed the same for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my

hand and official seal the day and year first above written.

GERTRUDE M. HARTMAN,
*Notary Public in and for the County of
Los Angeles, State of California.*

ENDORSEMENT: Return to Richard Castle, 9116 W. Pico, Los Angeles, Calif., Compared Document—Hayes, Bock-Elliott Recorded February 9, 1926, 27 min. past 3 P. M. in Book 5567 at page 250 of Official Records, Los Angeles County, Cal.”

(Exhibit 2):

“November 5, 1925.

Mr. Richard Castle
9150 West Pico
Los Angeles

Dear Sir:

In connection with your efforts on our behalf in obtaining contract for us with Oswald Brothers—We herewith beg to state that when this deal is completed, we shall deed to you \$25,000 worth of property in Beverlyridge. It is understood that you are to pay the release price on the lots which runs between \$1500 and \$1600.

Very truly yours,

Beverlyridge Company,

CHARLES STONE,

CS—am

Managing Director.”

Thereafter, upon petition, review was had before the District Court and said Court sustained the Findings and Order of the Referee (Trans. of Rec., p. 72).

It is the contention of the claimant Richard Castle that he performed everything on his part to be performed as required under the agreement, marked Claimant’s Ex-

hibit 2, being the letter of November 5, 1925, supra, when he secured the contract between George H. Oswald and Charles Stone, as trustee for the bankrupt co-partnership, and that this was borne out by the evidence of the contract or agreement to convey real estate between Charles Stone and Richard Castle, supra. (Claimant's Exhibit 1, Trans. of Record, pp. 81-4.)

SPECIFICATIONS OF ERROR AS TO RICHARD CASTLE.

I.

That the Findings of Fact and Conclusions of Law Are Not Supported by the Evidence, and Are Contrary to Law, and the Court Erred in Findings:

(a) (Finding No. X) That while a purported agreement was signed by George Oswald, it was never completely executed, in that, it was not signed by all the bankrupts, nor was it signed by all the parties to this agreement, to-wit: the wives of the partners comprising the Beverlyridge Company, the bankrupt herein.

(b) (Finding No. XI) That the deal which, when completed, was to entitle the claimant to \$25,000 worth of property in Beverlyridge, was never completed, and that said claimant did not perform any services for the Beverlyridge Company in accordance with his agreement.

(c) (Finding No. XII) That George H. Oswald refused to comply with the terms of the agreement which

he had signed, but which was incomplete as to the signatures of others, and that the bankrupt has received nothing of value by reason of the services rendered by Richard Castle.

(d) (Finding No. XIII) That Richard Castle is entitled to Eight Hundred and Eighty (\$880.00) Dollars, which he loaned said bankrupt estate to permit it to pay certain bills and expenses, and for which he has never been repaid.

(e) (Conclusions of Law 1) That said Richard Castle has no claim against the Bankrupt estate for \$25,000, or any other sum, under the agreements of November 5, 1925, or December 14, 1925, and has not been damaged in the sum of \$25,000 or any sum whatsoever, and his claim for damages therefor is disallowed.

(f) (Conclusions of Law 2) That the Bankrupt estate owes to Richard Castle the sum of Eight Hundred and Eighty (\$880.00) Dollars, loaned to said bankrupt estate by him to help it pay office help and expenses.

II.

That the Order Pursuant to the Findings Is Contrary to Law.

III.

That the Court Erred in Admitting Testimony Over the Objections of the Claimant.

IV.

That the Court Erred in Disallowing a Portion of the Said Claim.

V.

That the Court Erred in Refusing to Admit Testimony of Claimant.

ARGUMENT.

That the Findings of Fact and Conclusions of Law Are Supported by the Evidence and Are Contrary to Law and the Court Erred in Finding:

- (a) (Finding No. X) That While a Purported Agreement Was Signed by George H. Oswald, It Was Never Completely Executed in that It Was Not Signed by the Bankrupt, Nor Was It Signed by All the Parties to this Agreement, to-wit: The Wives of the Partners Comprising the Beverlyridge Company, the Bankrupt Herein.

We contend that the agreement signed by George Oswald and the Beverlyridge Company, bankrupt, was completely executed and delivered and is therefore binding upon all the parties interested in this transaction.

1. That When Richard Castle Obtained the Signature of George H. Oswald to the Contract and Delivered It to Charles Stone, the Managing Partner, Who Accepted It and Was Satisfied With the Contract, Richard Castle Had Performed Everything to Be Performed Upon His Part, and All that Was Required of Him Was Done.

The agreement so executed by Oswald was dated Nov. 18th, 1925 (Trans. of Re., pp. 84-85), two weeks after the bankrupt herein offered this claimant \$25,000 of property if he would obtain a contract from Oswald to put in the improvements in the tract the bankrupt was subdividing. The Bankrupt so treated and considered Castle's obligations performed; that thereafter on Dec. 14th, 1925, it executed its agreement to convey the property to Castle (Tr. of Re., pp. 81-3 inc). It will be noted that the agreement to convey only contains a description of the property by metes and bounds for the reason that a map or plat of the tract had not as yet been recorded in the office of the county recorder. A deed to the property at this time describing it by lot numbers would have been void as violating (Calif. Stats. 1913, p. 570), making it a misdemeanor to sell land by lot description before map is recorded. The agreement further provided that as soon as the map or plat was recorded this claimant would execute a quit claim deed of the property back to the bankrupt, and it, the Beverlyridge Company would then execute and deliver a deed of the premises to Castle. It further provided "*That at the time of such conveyance, party of the second part (Claimant herein) shall pay and discharge the full release price necessary to secure partial reconveyance of the said lots.*"

Two blanket trust deeds, one for \$350,000 and one for \$250,000 were liens upon the entire tract, a part of which was to be conveyed to Castle, and by reason of defaults in the payments under the terms of them, were foreclosed

before a map or plat was recorded, or deed executed and delivered by the bankrupt to Castle. By reason of such foreclosure the bankrupt lost the property and was unable to convey to Castle which undoubtedly the Beverlyridge Company would have done had it been in a position to do so.

The claimant Castle could have done no more than he did. He obtained Oswald's signature to the contract. He could not have compelled the rest of the partners to sign it. That duty rested on the partners themselves. Their neglect or refusal to sign the contract with Oswald, would or could not defeat Castle's claim to the property; it was an act to be performed by them alone.

At no stage of the transaction between Castle and the bankrupt was Castle's claim denied, until the trustee in bankruptcy filed his objections to the claim.

2. The Signature of Charles Stone, One of the Partners, Binds All of the Other Partners.

“Every general partner is liable to third persons for all the obligations of the partnership jointly with his co-partners.” Sec. 2442 *Civil Code*, State of California.

“Every general partner is agent for the partnership in the transaction of it's business, and has authority to do whatever is necessary to carry on such business in the ordinary manner, and for this purpose may bind his co-partners by an agreement in writing.” Sec. 2429, *Civil Code* of the State of California.

Under this section not only the agreement to convey,

but also the contract with Oswald binds the Beverlyridge Company. Claimant cannot see how the partnership can avoid the obligation of the partnership created by one of the partners. It was unnecessary to have all the partners sign and had they all signed no greater obligation would have fallen upon the partnership than that created by one of the partners for benefits coming to the partnership.

3. Charles Stone Had a Power of Attorney from the Co-partners.

In addition to the rule of law as to the obligations created by one partner, we have also the Power of Attorney executed by all the partners to Charles Stone (Trans. of Record, p. 130). This alone is sufficient even in the absence of a partnership relation to bind the company and each of the partners. The company now should be estopped from denying liability under the agreements made by Charles Stone for and on behalf of the company.

4. It Was Unnecessary to Have the Wives of the Partners Execute Any of the Agreements Herein.

The referee apparently based his decision against this claimant on the additional reason that the real property agreed to be conveyed was community property, and therefore, in the absence of the signature of each of the wives was not binding. (Trans. of Record, pp. 40-42 inc.)

Real property in the State of California can only be held in certain ways which are specifically provided in Sec. 682 of the *Civil Code* of the State of California and are as follows:

“The ownership of property by several persons is either—

1. Of joint interest;
2. Of partnership interests;
3. Of interests in common;
4. Of community interest of husband and wife.”

In the case at bar, the real property held by the bankrupt herein could have been held only in two ways at the most, either that of a partnership interest, or, in an extreme case, that of a community interest of husband and wife.

Section 684 of the *Civil Code* of this state sets forth:

“A partnership interest is one owned by several persons in partnership for partnership purposes.”

Section 687 of the same *code* states:

“Community property is property acquired by husband and wife, or either during marriage, when not acquired as the separate property of the other.”

In this case the claimant contends that the property was held by the trustee for the benefit of the partnership, and therefore was partnership property. This is borne out by the instrument or agreement between the co-partners (Trans. of Record, pp. 122-127). In which it sets forth that the property was to be conveyed to a trustee for the benefit of the partnership and in it the

interests of the partnership are set forth. Also on page 125 of the Transcript of Record the IV article of the agreement provided that Charles Stone would be the attorney in fact and director of each of the parties of the partnership. Article V at page 126 of the Transcript of Record further provided that the enterprise should be carried on by the parties as partners in the proportions specified in the agreement, and that the name of "Beverlyridge" be adopted as the trade name thereof.

Also the Deed of Trust (Trans. of Record, pp. 127-30), conclusively shows that the property was held in partnership interests. The property in question was deeded by Charles Stone and Clara Stone, *his wife*, trustors, to Charles Stone, trustee, for the Beverlyridge Company, a co-partnership. In the Deed of Trust the powers are specifically set forth. Transcript of Record, page 128, states "To have and to hold said property, subject to encumbrances now of record thereon, upon the following express trusts, to-wit:

1. To hold, sell, and convey same or any part thereof and to hold or reinvest or apply or dispose of the proceeds of such sales in accordance herewith.

2. The Trustee shall have power in his own uncontrolled discretion and without the consent or any act of beneficiary, *to sell, and convey any part or portion or all of the above described premises* to dedicate streets and roads; *to contract for and cause to be installed pavements, sidewalks curbs, conduits grading or regrading upon the said premises or any part thereof*, and for said purposes or any of them, to charge the said premises or

any part thereof or to mortgage same or any part thereof, or to execute and deliver deed or deeds of trust conveying same or any part thereof.

* * * *

IT BEING EXPRESSLY UNDERSTOOD AND AGREED that the title to said real property is vested in said trustee absolutely, and that said trustee has and shall have during the life of this trust full power and authority to sell, mortgage or convey the same or any part thereof, and that the beneficiary has, and shall have, no title legal or equitable in the said real property or any part thereof, but only an equitable title as beneficiary in the net proceeds of the sale of the said real property or any part thereof.

This deed conveying the property to Charles Stone as trustee was also executed by Clara Stone, wife of Charles Stone. Therefore the title was in Charles Stone as trustee for the bankrupt herein free from any community interest which Clara Stone might have had in it. By what theory can it be held that it was necessary for the wives to sign any agreement to convey the property.

Granted that the wives have a community interest in the earnings of their husband in the co-partnership, it is not an interest which would have required their signatures to a conveyance of the real property therein, as it was held by a trustee. Further there are numerous cases dealing with community property which hold that property belonging to a co-partnership is personal property

in the eyes of the law. In *Dupui vs. Leavenworth*, 17 Cal. 263, at page 268, the court said:

“In equity, real property acquired with partnership funds for partnership purposes is regarded as personal property so far as the payment of partnership debts and the adjustment of partnership rights is concerned, and in view of equity, it is immaterial in whose name the legal title of the property stands, whether in the individual name of one of the copartnership or in the joint name of all. The possessor of the legal title in such case holds his estate in trust for the purposes of the copartnership.”

The following are some of the cases discussing this question:

Moran v. McInerney, 129 Cal. 29, (saying that in a suit for dissolution and accounting, real estate should be treated as personalty); *Chapman vs. Hughes*, 104 Cal. 302, (holding that when a partnership is formed to deal in lands, and the parties contribute certain tracts, the lands become subject to the partnership agreement, although each party retains title to his tract, the titles being held in trust for firm purposes); *Woodward v. McAdam*, 101 Cal. 438; *Bates vs. Babcock*, 95 Cal. 479; *Duryea vs. Burt*, 28 Cal. 569; *Jones vs. Parsons*, 25 Cal. 100; *Gray vs. Palmer*, 9 Cal. 616, (holding that while firm realty for the purpose of disposal and distribution is to be treated as personal estate, there is an exception when there are no firm debts, in which case it should be partitioned if practicable); *Tutt v. Davis*, 13 Cal. App. 715, (holding that as between the members of partnership formed to deal in real estate, and in the settlement of equities between themselves, the assets of the firm will be regarded as personal property.

In this state, the husband having complete control over the disposition of the personal community property, so long as it is disposed of for value, the wife's consent is unnecessary. Notwithstanding the view that the referee took with reference to the property being held as community property it is plainly seen that the agreements were valid and binding in the absence of the signatures of the wives for the reasons set forth above.

5. The Agreement to Convey Is Binding Upon the Bankrupt.

The referee's theory that it was necessary to have the wives sign the contract to convey was in error for the additional reason that the contract covered an act to be performed, to-wit: the conveyance of the property at a future time, and was not a present conveyance of the title.

It is elementary that a man may make a contract to convey real property at a future date, and should the title to the property be held as community property by such man and his wife, and the wife refuse to join in the execution of the deed, an action for specific performance would not lie. However, an action for damages for the breach or failure to convey the property would lie against the husband signing the contract.

In the case at bar the co-partnership is composed of certain men, as set forth in the partnership agreement, supra, transcript, pp. 122-126, and they were the partners making up the Beverlyridge Company which is now in

bankruptcy. Had their wives signed the agreement to convey, then not only would Richard Castle have a claim against the co-partners and members of the partnership, but would also have a cause of action against the wives who were not in any way connected with the partnership.

It must be remembered that Oswald and Castle are herein seeking to collect only from the assets of the co-partnership which are in bankruptcy, and not from the wives who are not connected with the co-partnership, nor in bankruptcy.

II.

That the Findings of Fact and Conclusions of Law Are Not Supported by the Evidence and the Court Erred in Finding:

(b) (Finding XI) That the Deal Which When Completed, Was to Entitle the Claimant to \$25,000 Worth of Property in Beverlyridge, Was Never Completed and that Said Claimant Did Not Perform Any Services for the Beverlyridge Company in Accordance With His Agreement.

The Referee seems to lay great stress upon the fact that Castle never completed his deal and did not perform the services under his agreement, and in giving his reasons, refers to the letter of Nov. 5th, 1925, written by Charles Stone as the Managing Director of the bankrupt. It was addressed to Castle and reads as follows:

“In connection with your efforts on our behalf in obtaining contract for us with Oswald, we herewith beg to state that when this deal is completed,

we shall deed to you \$25,000 worth of property in Beverlyridge. It is understood that you are to pay the release price on the lots which runs between \$1500 and \$1600.”

On November 19, 1925 Castle secured Oswald’s signature to the contract referred to in the letter of November 5, 1925, and on December 14, 1925 the bankrupt, by its managing partner, Charles Stone, entered into another contract with Richard Castle, being the agreement to convey real estate (Tr., pp. 8-12). This agreement covers by metes and bounds the description of the real property to be given to Castle in consideration for his having secured Oswald’s signature to the contract. It recites that is is given “In consideration of a valuable sum in dollars to him in hand paid, receipt of which is hereby acknowledged, etc.”, and does not require Castle to do any act, or pay any future sums of money to the Beverlyridge Company before he shall receive the land described therein.

It calls for a definite release price to be paid, but such release price is paid to the holders of the blanket trust deeds covering the property. The contract is of, and in itself, an acknowledgment that Castle has performed everything upon his part to be performed as far as the Beverlyridge Company was concerned, in order to secure the property therein described. Had there been anything left for Castle to do or any other conditions to be performed by Castle, it would unquestionably have been inserted in said agreement to convey, the same as the conditions requiring Castle to give a claim deed so that a map might be recorded, and to thereafter pay the release

price when the map was recorded. Nor is there a scintilla of evidence that at the time Charles Stone executed and delivered said agreement to convey on the 14th day of December, 1925, to the claimant Castle herein, that Stone did not consider Castle had completed his agreement.

The only reason that the agreement to convey was delivered to Castle instead of an absolute conveyance, was the fact that the Beverlyridge Company had not, at that time, had a map or plat covering said property recorded in the County Recorder's office of Los Angeles County, and for the further reason that the portion of the property to be received by Castle was less than one acre and the blanket trust deeds covering the property provided that not less than one acre would be released from the lien of the trust deeds. As a result Castle could not pay the release price and recover the property which was agreed to be conveyed to him because it was less than one acre.

We thus find that the contract of Dec. 14, 1925, definitely established the rights of the respective parties and took the place of, and merged or cancelled whatever conditions were contained in said letter of November 5th. The referee stated, in his opinion, that Castle should have paid the release price referred to in the deeds of trust covering said property and thereby obtained the deeds to the property. The answer to this contention is that the agreement itself provides that "It is further understood and agreed that as soon as the party of the first part shall have caused to be duly approved and recorded

in the office of said recorder, a map or plat of the tract which contains the above described premises, party of the second part (Castle) shall quit claim and reconvey said premises by the same description to party of the first part, and party of the first part shall immediately thereupon convey to party of the second part, subject to the uniform restrictions to be incorporated in all conveyances of lots in said proposed tract, the premises hereinabove described by their proper lot and tract numbers.

“It is further understood and agreed *that at the time of such conveyance* the party of the second part shall pay and discharge the full release price necessary to secure partial reconveyance of said lots by the Trustee under two certain deeds of trust, each of which is now a blanket lien on the within described premises and other property.”

The evidence shows no map or plat was ever recorded, so under the agreement Castle was not required to pay the release price. The time at which the map or plat was recorded was the time agreed upon for Castle to pay the release price.

Another reason why the release price could not be paid was the fact that the property which Castle was to secure was less than one acre, and was so stipulated (Tr. of Record, p. 122). The very terms of the trust deed under which the bankrupt was buying the property provided that it could obtain releases of only one acre or more by the payment of the release price. It did not give the bankrupt any right to purchase or release from the lien of said trust deeds less than one acre, and Castle had no greater rights than the bankrupt.

After Castle had secured Oswald's signature on the contract there was nothing further for him to do, as it was then in the power of the Beverlyridge Company to go ahead and complete its contract with Oswald. Castle had procured the contract and the fact that the bankrupt partnership failed to carry out the terms of the Oswald contract by its failure to deliver the plans and specifications to Oswald, thereby preventing him from going ahead with the contract, was no fault of Castle's. All that was required of Castle was to obtain the signature of Oswald, who was ready, able and willing to perform the obligations of the contract.

Many authorities support this contention:

Stanton v. Carnahan, 115 Cal. App. 527. The contract involved was as follows:

“The buyer (Carnahan, the defendant) agrees to pay Stanton & Welch \$300 commission. Seller (Crawford) agrees to pay Stanton & Welch \$100 commission when deal is completed.”

The Court said:

“Upon this record, however, we must assume that evidence was introduced which tended to establish the fact that the failure to complete the deal was due to want of performance on the part of defendant, and hence the due performance or completion of the deal upon which payment was made contingent was excused.” (Citing C. C., Sec. 1512.)

Section 1512 of the *Civil Code* of California reads as follows:

“If the performance of an obligation be prevented by the creditor, the debtor is entitled to all the bene-

fits which he would have obtained if it had been performed by both parties.”

Sections 1439 and 1440 of the *California Civil Code* read as follows:

“1439. Before any party to an obligation can require another party to perform any act under it, he must fulfill all conditions precedent thereto imposed upon himself; and must be able and offer to fulfill all conditions concurrent so imposed upon him on the like fulfillment by the other party, except as provided by the next section.”

“1440. If a party to an obligation gives notice to another, before the latter is in default, that he will not perform the same upon his part, and does not retract such notice before the time at which performance upon his part is due, such other party is entitled to enforce the obligation without previously performing or offering to perform any conditions upon his part in favor of the former party.”

III.

That the Findings of Fact and Conclusions of Law Are Not Supported by the Evidence, and the Court Erred in Its Findings.

(c.) “Finding 12). The Court finds that George H. Oswald refused to comply with the terms of the agreement which he had signed, but which was incomplete as to the signatures of others, and that the bankrupt has received nothing of value by reason of the services rendered by Richard Castle.”

There is not a scintilla of evidence that Oswald re-

fused to comply with the terms of the agreement which he had signed. Oswald testified he was ready, able and willing at all times to go on and complete the work as set forth in the contract, under the terms and conditions of the contract. He also testified that he did not go ahead with the work because of the fact that the Beverlyridge Company did not produce the plans, specifications and permits as they were required to do under the contract, and that he, Oswald, requested the plans, specifications and permits dozens of times; and it was also stipulated that Oswald had the financial ability to comply with the contract. (Tr. of Record, pp. 113-114.)

The portion of said finding that the bankrupt received nothing of value by reason of the services rendered by Castle is certainly not supported by the evidence, for Castle delivered the contract calling for \$500,000.00 or \$600,000.00 worth of improvements signed by Oswald, who was at all times ready, able and willing to complete the work if the Beverlyridge Company had complied with the terms of the contract. In addition, the Beverlyridge Company recognized that the obtaining of the contract by Castle from Oswald to make the improvements was something of value when it gave Castle the agreement to convey (Tr., p. 8) \$25,000.00 worth of property, and in return was to receive no further consideration from Castle. If the bankrupt had not deemed the obtaining of the Oswald contract of value, it certainly would not have agreed to give Castle over \$20,000.00 worth of real property.

It is the contention of the claimant herein that in view

of the power of attorney (Tr., p. 130) and the law in the matter, an instrument signed by Charles Stone, who was a partner, for and on behalf of the partnership, is the act of the partnership; therefore, the contract executed by Stone on the one hand and Oswald, on the other, even in the absence of the signatures of the remaining partners and their wives is not only binding upon the partnership, but also upon Oswald.

“A contract which purports on its face to be inter partes need not invariably be signed by all parties named in the contract in order to become operative, and in the absence of a showing that the contract was not to be deemed complete until other signatures should be added, the parties signing it will be holden thereon.”

(*Cavanaugh vs. Casselman*, 88 Cal. 543.)

The signatures of the remaining partners and their wives could have given no further legal effect to the contract of Oswald than could it have given the agreement to convey to Castle, and the same law, argument and reasoning applies to this agreement between Oswald and the partnership as has been set forth above. Oswald was bound to perform his agreement under his contract when he and Stone executed it. The minds had met and when he and Stone executed the agreement all the parties that were necessary to the agreement had signed and the agreement was enforceable by both parties thereto. We feel in view of the arguments heretofore set out that anything further would be in repetition and therefore useless.

IV.

That the Findings of Fact and Conclusions of Law Are Not Supported by the Evidence and the Court Erred in Finding:

(d) (Finding No. XIII) That Richard Castle Is Entitled to Eight Hundred and Eighty (\$880.00) Dollars Which He Loaned Said Bankrupt Estate to Permit It to Pay Certain Bills and Expenses, and for Which He Has Never Been Repaid.

This finding is in error for the reason that the claimant is not only entitled to the \$880.00 above found, but is also entitled to the sum of Twenty Thousand, Four Hundred and Seventy-four (\$20,474) in addition by reason of said agreement to convey said property to him for services rendered. That the said sum of \$20,474.00 was fixed by stipulation as the amount Castle was damaged, if his claim is allowed. (Tr., p. 122.) The reasons, facts and authorities heretofore set forth in answer to the findings and assignments of errors are again referred to in support of appellants' contention to this assignment of error.

V.

That the Court Erred in Concluding that Richard Castle Has No Claim Against the Bankrupt Estate for \$25,000 or Any Other Sum, Under the Agreements of November 5, 1925, or December 14, 1925, and Has Not Been Damaged in the Sum of \$25,000, or Any Sum Whatsoever, and His Claim for Damages Therefor Is Disallowed.

This conclusion is consistent with the findings as found by the court, but in view of the fact that the findings are against the evidence and law, the court erred in making this conclusion. The reasons, facts and authorities set forth in answer to the findings and assignment of errors are again referred to in support of appellants' contention to this assignment of error.

VI.

That the Order Pursuant to the Findings Is Contrary to Law.

In reference to the above assignment of error, and in conclusion we respectfully submit that the District Court should not have affirmed the findings and order of the referee as to Castle's claim, but should have changed the same, allowing claim of Castle in the sum of \$20,474 by reason of the fact that he secured a contract signed by Oswald calling for approximately \$500,000.00 worth of improvements. The said Oswald was ready, able and willing to carry out said contract; that after rendering said services and securing the contract signed by said Oswald, said bankrupt co-partnership delivered to Castle a contract setting forth the specific land, the time when the same was to be conveyed, and that Castle has performed everything on his part to be performed, and that the property which he was to receive was lost by the Beverlyridge Company through no fault of Castle's.

VII.

That the Order Pursuant to the Findings Is Contrary to Law.

In reference to the above assignment of error, and in conclusion, we respectfully submit that the District Court erred in affirming the findings and order of the referee as to Castle's claim, and should have changed the same, allowing the claim of Castle in the sum of twenty thousand four hundred seventy-four dollars (\$20,474.00) for the following reasons:

(a) Castle in good faith secured the contract signed by Oswald calling for approximately five hundred thousand dollars worth of improvements;

(b) Oswald in good faith signed the contract and was ready, able and willing to comply with the same;

(c) Castle performed his obligation so far as the bankrupt was concerned when he secured the contract signed by Oswald;

(d) The bankrupt acknowledged its indebtedness and that Castle had performed his obligation when it executed the contract or agreement to convey, setting forth the specific land, the time when the same was to be conveyed, and demanded nothing further of Castle;

(e) Castle performed everything on his part to be performed, as provided in the agreement to convey;

(f) That the property which Castle was to receive was lost by the Beverlyridge Company through no fault of Castle's, thereby preventing Beverlyridge Company from performing its contract, and causing Castle a loss of \$20,474.

STATEMENT OF THE CASE OF GEORGE H. OSWALD

The claim of George H. Oswald was presented and heard at the same time with the claim of Richard Castle, and because of their close connection the matters were consolidated. The matters were considered together when reviewed by the District Court and therefore the same Transcript of Record is used and only one brief filed. However, since they are separate matters, certain points must be treated separately even though the law as applied to the Castle contract must be also applied in this matter.

Oswald's contract with the Beverlyridge Company called for improvements in the tract amounting to between \$500,000 and \$600,000. The contract is found in the Transcript of Record beginning at page 18, as follows:

“This Agreement made and entered into this 19th day of November, A. D., 1925, by and between Charles Stone, Trustee, Charles Stone and Clara F. Stone, his wife, John M. Pratt and Dorothy Pratt, his wife, James Westervelt and Mary C. Westervelt, his wife, and W. R. Norcross, an unmarried man, parties of the first part, and George H. Oswald, party of the second part: Witnesseth:

(Herein follows work to be done.)

IN WITNESS WHEREOF, The parties have hereto set their hands and seals the day and year first above written.

CHARLES STONE, Trustee

CHARLES STONE

F. A. ARBUCKLE, by Charles Stone, Atty. in fact

JOHN M. PRATT, by Charles Stone Atty in fact

W. I. NORCROSS, by Charles Stone Atty in fact
JAMES WESTERVELT

Parties of the First Part

GEO. H. OSWALD,

Party of the Second Part.”

As will be noted, the contract was executed by Geo. H. Oswald, party of the second part, and Charles Stone, as trustee, together with himself individually. He also executed the agreement under his power of attorney on behalf of the other partners. He held no power of attorney of the wives of the partners. It will be noted that the wives were not considered partners in any of the agreements.

SPECIFICATIONS OF ERROR AS TO GEORGE H. OSWALD

I.

**That the Findings of Fact and Conclusions of Law
Are Not Supported by the Evidence and Are
Contrary to Law, and the Court Erred in Find-
ing:**

(a) (Finding No. VI) That the interest of Charles Stone in the property mentioned in the agreement was a community interest in which his wife shares, as community property.

(b) (Finding No. VIII) That there is no evidence empowering Charles Stone to sign the agreement on behalf of the wives of the various parties, nor did he so sign, nor is there any evidence that he claimed to represent said wives.

(c) (Finding No. XIII) That the contract, marked Exhibit 3, and dated the 19th day of November, 1925, never became effective because of the absence of the signatures of all of its parties, and the claimant, George Oswald, did not consent to the acceptance of the contract without the signature of all of the parties named herein, and did in fact refuse to consider it in force and proceed with the work.

(d) (Finding No. XV.) That George Oswald is entitled to Three Hundred, Two and $43/100$ Dollars, which he loaned said bankrupt on the 8th day of December, 1925, to enable the bankrupt to pay its telephone bill.

(e) (Conclusion of Law I.) That George Oswald is entitled to the sum of Three Hundred, Two and $43/100$ Dollars from said bankrupt, being money loaned by him to said bankrupt to enable them to pay their telephone bill.

(f) (Conclusion of Law No. II.) That George Oswald is entitled to no damages from said bankrupt.

II.

That the Order Pursuant to the Findings is Contrary to Law.

III.

That the Court Erred in Admitting Testimony Over the Objections of the Claimant.

IV.

That the Court Erred in Disallowing a Portion of the Said Claim.

V.

That the Court Erred in Refusing to Admit Testimony of Claimant.

ARGUMENT.

I.

That the Findings of Fact and Conclusions of Law are not Supported by the Evidence and are Contrary to Law; and the Court Erred in Finding:

- (a) (Finding No. VI) That the Interest of Charles Stone in the Property Mentioned in the Agreement was a Community Interest in Which his Wife Shares, as Community Property.

The referee and trustee both contend that there was a community interest held by the wives in the property of the partnership, and the referee based his decision largely upon that ground. In view of the facts and law discussed heretofore in the Castle claim, we feel that those contentions are controverted and that the finding above set out is not supported by evidence and is contrary to law.

As will be seen Charles Stone and Clara Stone, his wife, executed a Deed of Trust to Charles Stone as trustee for the partners named in the Deed of Trust. (Trans. of Record, pp. 127-29.) It will be noted in that instrument that the wives are not mentioned and

we believe that it is not the contention of the trustee that the wives were partners. Stone holding the property as trustee for the partnership, and in view of the powers given him in the Deed of Trust, had full power to sell, convey, and contract for improvements. The copartnership was bound by his signature. The signatures of the wives on the agreement was neither necessary nor would they have given any greater legal effect to the instrument. It is not contended that they were guarantors and therefore their signatures would have been valueless. The partnership could have enforced the contract as against Oswald, if there had been no default upon their part.

It makes no difference whether or not the property to be improved was community property. The husband has control over it and can contract for improvements without his wife's signature. If the property is community property it might in some cases take the wife's signature to convey her interest, but never in a case such as this where it is held in trust by one individual for the partnership. The wife of Stone conveyed her interest to her husband as trustee for the remaining partners, and she therefore is estopped from asserting an interest in it.

We feel that the finding is contrary to the evidence and law and is alone sufficient, in view of the written opinion of the referee to warrant a reversal of the order appealed from.

II.

That the Findings of Fact are not Supporteded by the Evidence and are Contrary to Law and the Court Erred in Finding:

(b) (Finding No. VIII.) That There is no Evidence Empowering Charles Stone to Sign the Agreement on Behalf of the Wives of the Various Parties, Nor Did He So Sign, Nor is There any Evidence That he Claimed to Represent Said Wives.

It is the contention of the claimant Oswald that it was unnecessary for the wives to sign the contract in order to make it a valid and binding claim against the bankrupt, as the wives were not members of the partnership and had no interest in the property of the partnership itself. Also, Charles Stone, being the managing director of the partnership, with a power of attorney from the remaining partners, and the powers conferred upon him by reason of the conveyance of the property in trust to him, was the only one necessary to execute the agreement. This claimant feels that in view of the law and facts referred to in the brief of Richard Castle relative to this point that it would be merely repetition to again set it forth.

III.

That the Findings of Fact are not Supported by the Evidence and are Contrary to Law and the Court Erred in Finding:

(c) (Finding No. XIII) That the Contract, Marked Claimant's Exhibit 3, and Dated the 19th Day of November, 1925, Never Became Effective Because of the Absence of the Signatures of all of its Parties, and the Claimant George Oswald did not Consent to the Acceptance of the Contract Without the Signature of all of the Parties Named Herein, and Did in Fact Refuse to Consider it in Force and Proceed with the Work.

As stated in the brief of Castle, the contract executed by Oswald was binding when signed by Oswald on the one hand and Charles Stone on the other, so far as the bankrupt co-partnership was concerned. Stone had full power to act for the partnership and his signature is alone binding. Whether Oswald treated it so or not, it was binding upon him and could have been enforced. We again call the court's attention to the case heretofore cited, to-wit:

Cavanaugh vs. Casselman, 88 Cal. 543.

We also find that Oswald was unable to do any work under the contract for the reason that the bankrupt failed after repeated requests, to furnish the permits to do the work. The maps and plats had to be first approved by the City of Los Angeles, and permits issued before the work was done (Tr. Rec., p. 113), and it was incumbent upon the bankrupt to furnish the plans and permits.

In Paragraph 2 of the contract signed by Oswald we find:

“All of the above work to be under the inspec-

tion of the City of Los Angeles, according to the plans and profiles to be furnished by the parties of the first part and approved by the City of Los Angeles, permits for the above work to be taken out by the parties of the first part (bankrupt) and the costs of said permits to be paid by the parties of the first part.”

This alone prevented Oswald from doing any work under the contract as the permits were never taken out. It was a condition precedent to be performed by the bankrupt before Oswald could do anything under his contract.

Conclusion

The remaining specifications of error can be grouped together in their consideration, as they are all sustained by reason of the facts and law set forth herein above.

We submit that the District Court should have reversed the findings of fact, conclusions of law and order thereon made and entered by the Referee on the grounds set forth herein as to both Richard Castle and George H. Oswald.

Wherefore these claimants pray that this court enter its judgment answering the order affirming the Referee's findings of fact, conclusions of law and order thereon and grant these appellants relief as prayed.

Respectfully submitted,

GEO DE LANEY BLAIR,

J. GILBERT FALL,

Attorneys for Appellants.

